

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Cause No. 1:13-cr-0122-SEB-TAB
)
ADRIAN SMITH,) - 06
)
Defendant.)

REPORT AND RECOMMENDATION

On April 25, 2017, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on March 30, 2017, and a Supplemental Petition filed on April 12, 2017. Defendant Smith appeared in person with his appointed counsel Michael Donahoe. The government appeared by Matt Lasher, Assistant United States Attorney. U.S. Parole and Probation appeared by Officer Jennifer Considine.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Smith of his rights and ensured he had a copy of the Petition and the Supplemental Petition. Defendant Smith orally waived his right to a preliminary hearing.

2. After being placed under oath, Defendant Smith admitted violation 2 as set forth in the Supplemental Petition. [Docket No. 367.]

3. The allegations to which Defendant admitted, as fully set forth in the Supplemental Petition, are:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
-------------------------	--------------------------------

- 2 **“The defendant shall abstain from the use of all intoxicants, including alcohol, while on supervision.”**

According to Vigo County Sheriff’s Office report, on April 2, 2017, deputies were dispatched to Mr. Smith’s residence due to a report made by his significant other stating he was going to harm himself. Upon making contact with Mr. Smith, officers detected an odor of alcoholic beverages omitting [sic] from him. Due [to] the threat of suicide, Mr. Smith was transported by deputies to Union Hospital in Terre Haute for observation. While Mr. Smith was being transported to the hospital, he admitted to Vigo County Sheriff’s Deputy Ryan Hartleroad that he drank 2 shots of liquor and 4 beers and consumed a handful of Seroquel. Mr. Smith does have a valid prescription for Seroquel.

4. Government orally moved to dismiss violation 1 because the Defendant Smith’s paid in full the amount owed for court fines, and violation 1 was dismissed.

5. The Court finds that:
- (a) The highest grade of violation is a Grade C violation.
 - (b) Defendant’s criminal history category is I.
 - (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 3 to 9 months’ imprisonment.

6. The parties jointly recommended a modification extending Defendant Smith’s supervised release an additional four (4) months. As previously ordered, Defendant Smith is to pay his co-pay for treatment and resume treatment sessions.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the Supplemental

Petition, and recommends that Defendant's supervised release be modified by increasing the term of Defendant's supervised release by four (4) months and be further modified as follows:

1. You shall report to the probation office in the district to which you are released within 72 hours of release from the custody of the Bureau of Prisons. (Supervised Release cases only)
2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3. You shall permit a probation officer to visit you at a reasonable time at home, or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer.
4. You shall not knowingly leave the judicial district without the permission of the court or probation officer.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege.
6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact.
7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in residence occupants, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon.
9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
12. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and shall

permit the probation officer to make such notifications and/or confirm your compliance with this requirement.

13. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision.

Justification: these conditions are recommended to assist the probation officer in supervising the offender and facilitating re-entry into the community, as well as to promote respect for the law and reduce recidivism.

14. You shall pay the costs associated with the following imposed conditions of supervised release/probation, to the extent you are financially able to pay: substance abuse treatment and substance abuse testing. The probation officer shall determine your ability to pay and any schedule of payment.
15. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.).
16. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage.
17. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods.
18. You shall provide the probation officer access to any requested financial information and shall authorize the release of that information to the U.S. Attorney's Office for use in connection with the collection of any outstanding fines and/or restitution..
19. You shall not incur new credit charges, or open additional lines of credit without the approval of the probation officer.
20. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary.

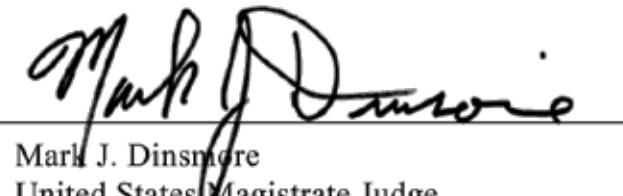
You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches.

Justification: the above conditions are recommended based upon the circumstances surrounding the instant offense.

Defendant reviewed the foregoing conditions and they were reviewed by Defendant with his attorney. Defendant, on the record, waived reading of the above-noted conditions of supervised release.

The parties were notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Dated: 1 MAY 2017



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

Distribution:

All ECF-registered counsel of record via email generated by the court's ECF system

United States Probation Office, United States Marshal